

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:13-11383 Jose Luis Uribe and Janet Dee Uribe**

**Chapter 13**

**#1.00** HearingRE: [77] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2266 N. Woodcreek, Camarillo, CA 93012 . (Zilberstein, Kristin)

Docket 77

**Tentative Ruling:**

None.

<b>Party Information</b>
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**Debtor(s):**

Jose Luis Uribe

Represented By  
Andrew S Mansfield  
Andrew S Mansfield  
Andrew S Mansfield

**Joint Debtor(s):**

Janet Dee Uribe

Represented By  
Andrew S Mansfield  
Andrew S Mansfield  
Andrew S Mansfield  
Patricia C Vaughn  
Patricia C Vaughn  
Patricia C Vaughn

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:00 AM

**9:14-11791      Cheryl R Goodman**

**Chapter 7**

**#2.00**      HearingRE: [62] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1301 Dominica Drive, Oxnad, CA 93035 with proof of service. (Foreman, Brandye)

Docket      62

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501 and/or a timely complaint to determine the nondischargeability of the debt under 11 U.S.C. § 523. Since a chapter 7 case does not contemplate reorganization, the sole issue before the court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the debtor has equity in the property. See e.g., Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (9<sup>th</sup> Cir. BAP 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (9<sup>th</sup> Cir. BAP 1981).

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT...**

**Cheryl R Goodman**

**Chapter 7**

The subject real property has a value of \$340,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. The liens against the property total \$430,032.58. The court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Cheryl R Goodman

Represented By  
Edmond Richard McGuire

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:15-10745 Jesse Irving Waitkuweit**

**Chapter 13**

**#3.00** HearingRE: [37] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2071 Heather St., Simi Valley, California 93065 with Proof of Service. (Loftis, Erica)

Docket 37

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The court has considered the untimely opposition filed by the debtor on September 21, 2016, which admits the existence of post-petition arrears and indicates intent to enter into an adequate protection agreement with the movant. The failure of the trustee and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1 (h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

Absent a stipulation regarding adequate protection, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 7 post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (9<sup>th</sup> Cir.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT...**      **Jesse Irving Waitkuweit**  
BAP 1985).

**Chapter 13**

The trustee must not make any future payments on account of Movant's secured claim after entry of the order granting the motion. The secured portion of Movant's claim will be deemed withdrawn upon entry of the order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the chapter 13 trustee any payments received from the trustee on account of Movant's secured claim after entry of the order granting the motion.

The stay having been terminated as to the debtor and no opposition having been filed by a co-debtor, the co-debtor stay afforded by 11 U.S.C. § 1201(a) or 11 U.S.C. § 1301(a), as the case may be, is terminated, modified, or annulled as to any co-debtor on the same terms and conditions as the debtor.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Jesse Irving Waitkuweit

Represented By  
Jeffrey J Hagen

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:15-10887 Frank Charles Moreno and Susana Moreno**

**Chapter 13**

**#4.00** HearingRE: [48] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1201 Domingo Pl., Oxnard, California 93030-2595 With Proof of Service. (Loftis, Erica)

Docket 48

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 3 post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (9<sup>th</sup> Cir. BAP 1985).

The trustee must not make any future payments on account of Movant's secured claim after entry of the order granting the motion. The

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Frank Charles Moreno and Susana Moreno**

**Chapter 13**

secured portion of Movant's claim will be deemed withdrawn upon entry of the order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the chapter 13 trustee any payments received from the trustee on account of Movant's secured claim after entry of the order granting the motion.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Frank Charles Moreno

Represented By  
Andrew S Mansfield  
Andrew S Mansfield

**Joint Debtor(s):**

Susana Moreno

Represented By  
Andrew S Mansfield  
Andrew S Mansfield

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-10025 Jeffrey Lee Firestone and Wantana Firestone**

**Chapter 13**

**#5.00** HearingRE: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 80 E Harmon Avenue, Las Vegas, NV 89109 . (Mulally, Thomas)

Docket 34

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant is secured by a deed of trust encumbering real property owned by the debtor. The debtor has failed to pay 7 post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (9<sup>th</sup> Cir. BAP 1985).

The trustee must not make any future payments on account of Movant's secured claim after entry of the order granting the motion. The secured portion of Movant's claim will be deemed withdrawn upon entry of



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Jeffrey Lee Firestone and Wantana Firestone**

**Chapter 13**

the order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the chapter 13 trustee any payments received from the trustee on account of Movant's secured claim after entry of the order granting the motion.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Jeffrey Lee Firestone

Represented By  
Stella A Havkin

**Joint Debtor(s):**

Wantana Firestone

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-10025 Jeffrey Lee Firestone and Wantana Firestone**

**Chapter 13**

**#6.00** HearingRE: [36] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2650 Las Vegas Blvd., South, Las Vegas, NV 89109 . (Mulally, Thomas)

Docket 36

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant is secured by a deed of trust encumbering real property owned by the debtor. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay 7 post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (9<sup>th</sup> Cir. BAP 1985).

The trustee must not make any future payments on account of Movant's secured claim after entry of the order granting the motion. The

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:00 AM

**CONT...      Jeffrey Lee Firestone and Wantana Firestone**

**Chapter 13**

secured portion of Movant's claim will be deemed withdrawn upon entry of the order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the chapter 13 trustee any payments received from the trustee on account of Movant's secured claim after entry of the order granting the motion.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Jeffrey Lee Firestone

Represented By  
Stella A Havkin

**Joint Debtor(s):**

Wantana Firestone

Represented By  
Stella A Havkin

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-11167 Christopher Michael Nickell**

**Chapter 7**

**#7.00** HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 Chevrolet Silverado 1500 truck .

Docket 9

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501 and/or a timely complaint to determine the nondischargeability of the debt under 11 U.S.C. § 523. Since a chapter 7 case does not contemplate reorganization, the sole issue before the court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the debtor has equity in the property. See e.g., Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (9<sup>th</sup> Cir. BAP 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (9<sup>th</sup> Cir. BAP 1981).

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Christopher Michael Nickell**

**Chapter 7**

The subject property has a value of \$9,859.00 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$22,815.62. There is no equity in the subject property and no evidence that the trustee can administer the subject property for the benefit of creditors. The trustee has filed a no asset report. Also, the evidence indicates that debtor voluntarily surrendered the collateral to movant post-petition on July 14, 2016.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Christopher Michael Nickell

Represented By  
David L Hagan

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-11212 Esmeralda Calderon**

**Chapter 7**

**#8.00** HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 130 Miranda Ct., Santa Maria, CA 93458 . (O, Christina)

Docket 12

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362 (d)(1) to permit movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501 and/or a timely complaint to determine the nondischargeability of the debt under 11 U.S.C. § 523. Movant has established a *prima facie* case that cause exists, and debtor has not responded with evidence establishing that the property is not declining in value or that movant is adequately protected.

The subject property has a value of \$339,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. The liens against the property total \$330,200.82 . There is some, but very little, equity and there

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Esmeralda Calderon**

**Chapter 7**

is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. The trustee has filed a no asset report. Movant is protected by a 2.7% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9<sup>th</sup> Cir. 1984); *see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.)*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral). However, whether an equity cushion of any particular size provides adequate protection for a creditor's security interest in the debtor's property depends on a consideration of all circumstances.

In this case, the debtor was delinquent 15 installments on the loan secured by the subject property at the time this motion was filed. There is no evidence that debtor or trustee has made or tendered any payments to movant since the commencement of the case. Given the facts of this case and an equity cushion of less than 20%, the court concludes that movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Esmeralda Calderon

Represented By  
Brian Nomi

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-11266 Chadd Everett Moore**

**Chapter 7**

**#9.00** HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 FORD F250, VIN 1FT7W2BT3EEB86885 . (Wang, Jennifer)

Docket 12

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501 and/or a timely complaint to determine the nondischargeability of the debt under 11 U.S.C. § 523. Since a chapter 7 case does not contemplate reorganization, the sole issue before the court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the debtor has equity in the property. See e.g., Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (9<sup>th</sup> Cir. BAP 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (9<sup>th</sup> Cir. BAP 1981).



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Chadd Everett Moore**

**Chapter 7**

The subject property has a value of \$31,550.00 and is encumbered by a perfected security interest in favor of the movant. That security interest secures a claim of \$50,175.60. There is no equity in the subject property and no evidence that the trustee can administer the subject property for the benefit of creditors.

The 14-day stay of FRBP 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Chadd Everett Moore

Pro Se

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-11338 Maria De Los Angeles Cazares**

**Chapter 7**

**#10.00** HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Dodge Durango .

Docket 9

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1 (h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(2) to permit movant, its successors, transferees and assigns, to enforce its remedies to dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501 and/or a timely complaint to determine the nondischargeability of the debt under 11 U.S.C. § 523. Since a chapter 7 case does not contemplate reorganization, the sole issue before the court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the debtor has equity in the property. See e.g., Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (9<sup>th</sup> Cir. BAP 1982); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896 (9<sup>th</sup> Cir. BAP 1981).

The subject property has a value of \$30,336.00 and is encumbered by a

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Maria De Los Angeles Cazares**

**Chapter 7**

perfected security interest in favor of the movant. That security interest secures a claim of \$35,799.41. There is no equity in the subject property and no evidence that the trustee can administer the subject property for the benefit of creditors. The trustee has filed a no asset report. Furthermore, the court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention filed in this case on July 14, 2016, in which the debtor stated an intention to surrender the property to movant.

The 14-day stay of FRBP 4001(a)(3) is ordered waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Maria De Los Angeles Cazares

Represented By  
Todd J Mannis

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:00 AM

**9:16-11351    Sonia M. Fino-Duran**

**Chapter 7**

**#11.00    Hearing**

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 Infiniti G37 sedan .

Docket      9

**\*\*\* VACATED \*\*\*    REASON: Withdrawn by movant**

**Tentative Ruling:**

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<b>Party Information</b>
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**Debtor(s):**

Sonia M. Fino-Duran

Represented By  
Bryan Diaz

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**9:16-11433 David A Lima and Nicole M Lima**

**Chapter 7**

**#12.00** HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 625 Hanson Lane, Ramona, CA 92065 with Proof of Service.

Docket 9

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtors, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1 (h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). The stay is terminated as to the debtors and the debtors' bankruptcy estate with respect to the movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtors or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

Movant completed a nonjudicial foreclosure sale on the real property occupied by the debtors. Movant served the debtors with a notice to quit the premises January 30, 2016. When the debtors failed to vacate the premises, an unlawful detainer action was filed and served June 10, 2016. Debtor filed the bankruptcy petition on July 29, 2016 in an apparent effort to stay prosecution

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... David A Lima and Nicole M Lima**

**Chapter 7**

of the unlawful detainer action. This motion has been filed to proceed with the unlawful detainer action. This action must go forward because the debtors' right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed.

Movant requests in the motion that "extraordinary relief" be granted by the court. An order prohibiting for 180 days the subsequent filing of a bankruptcy case by the debtor or by another person or entity to whom the subject property may be transferred is in the nature of an injunction not specifically authorized by the Bankruptcy Code. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 196 (9th Cir. BAP 2006). Nor does there "appear to be direct statutory authority for an order that bans the filing of future bankruptcy cases by other persons, bans automatic stays in future cases, and authorizes the sheriff to ignore a future bankruptcy case when conducting an eviction." In re Van Ness, 399 B.R. 897, 903 (Bankr. E.D. Cal. 2009). Therefore, a motion is not the appropriate vehicle for obtaining the "extraordinary relief" requested. Movant must seek this aspect of the relief by adversary proceeding. Johnson, 346 B.R. at 195. Accordingly, the movant's request for "extraordinary relief" is denied.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

David A Lima	Pro Se
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**Joint Debtor(s):**

Nicole M Lima	Pro Se
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**Trustee(s):**

Jeremy W. Faith (TR)	Pro Se
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**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:00 AM

**9:16-11628    Mark Allen Shear**

**Chapter 13**

**#13.00**    HearingRE: [20] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3185 Hoop Pine Place, Simi Valley, CA 93065 .

Docket      20

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The failure of the debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1 (h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). The stay is terminated as to the debtor and the debtor's bankruptcy estate with respect to the movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

Movant completed a nonjudicial foreclosure sale on the real property formerly owned by, and still occupied by, the debtor. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App. 4<sup>th</sup> 822, 831 (1994). In this case, the debtor has no right to ignore the foreclosure and attempt to reorganize the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT...**      **Mark Allen Shear**  
debt.

**Chapter 13**

Movant served the debtor with a notice to quit the premises May 13, 2016. When the debtor failed to vacate the premises, an unlawful detainer action was filed and served May 18, 2016. An unlawful detainer judgment was entered in favor of movant on August 22, 2016 and a writ of possession for the property was issued on August 23, 2016. Debtor filed the bankruptcy petition on August 31, 2016 in an apparent effort to stay enforcement of the unlawful detainer judgment. However, upon the filing of the petition, the debtor had no legal or equitable interest in the premises. The unlawful detainer judgment and writ of possession gave movant legal title and all rights of possession. Perl v. Eden Place, LLC (In re Perl), 811 F.3d 1120, 1130 (9th Cir. 2016).

Movant requests in the motion that "extraordinary relief" be granted by the court. An order prohibiting for 180 days the subsequent filing of a bankruptcy case by the debtor or by another person or entity to whom the subject property may be transferred is in the nature of an injunction not specifically authorized by the Bankruptcy Code. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 196 (9th Cir. BAP 2006). Nor does there "appear to be direct statutory authority for an order that bans the filing of future bankruptcy cases by other persons, bans automatic stays in future cases, and authorizes the sheriff to ignore a future bankruptcy case when conducting an eviction." In re Van Ness, 399 B.R. 897, 903 (Bankr. E.D. Cal. 2009). Therefore, a motion is not the appropriate vehicle for obtaining the "extraordinary relief" requested. Movant must seek this aspect of the relief by adversary proceeding. Johnson, 346 B.R. at 195. Congress has provided an "in rem" remedy in 11 U.S.C. § 362(d)(4), which does not require an injunction. Id. at 197. However, relief under § 362(d)(4) is not available here, as the movant is the putative owner of the property and not a creditor with a lien secured by the subject property. See Ellis v. Yu (In re Ellis), 523 B.R. 673 (9th Cir. BAP 2014). Accordingly, the movant's request for "extraordinary relief" is denied.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:00 AM

**CONT... Mark Allen Shear**

**Chapter 13**

to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Mark Allen Shear

Represented By  
Stephen Parry

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:12-14309 Mark Melchiori**

**Chapter 7**

**#14.00 Chapter 7 Trustee's Final Report**

SANDRA MCBETH, Ch.7 Trustee

KATHLEEN KLEIN, Accountant

LEVENE NEAL BENDER YOO & BRILL LLP, Atty. for Trustee

FARMER & READY, Atty. for Trustee

FELL MARKING ABKIN MONTGOMERY GRANET & RANEY LLP, Special Counsel

Docket 297

**Tentative Ruling:**

None.

**Final Ruling.** These fee applications have been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

**Sandra K. McBeth.** Sandra K. McBeth ("Trustee") has filed a first and final application for compensation and reimbursement of expenses pursuant to 11 U.S.C. §§ 326 & 330. Trustee has itemized \$122,062.08 in fees and \$1,667.14 in costs, for a total of \$123,729.22. No creditor or other party

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Mark Melchiori**

**Chapter 7**

in interest, including the United States trustee, has filed an objection to the application.

In a case under chapter 7 or 11, the court may allow reasonable compensation under § 330 to the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amounts in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims. 11 U.S.C. § 326(a).

In this case, Trustee was appointed on November 26, 2012. Trustee's services cover the period of November 26, 2012 through August 15, 2016. The total money disbursed or turned over in the case by the Trustee to parties in interest, excluding the debtor, is \$4,544,586.17. There being no extraordinary circumstances present in this case, the trustee's requested compensation is presumed reasonable since it is sought at the statutory rate. In re Salgado-Nava, 473 B.R. 911 (9th Cir BAP 2012).

Accordingly, the court finds that the Trustee's requested compensation meets the requirements of 11 U.S.C. § 326(a) and represents reasonable compensation for actual, necessary services rendered in the administration of this estate. The compensation is approved.

**Levene, Neale, Bender, Yoo & Brill, LLP.** Levene, Neale, Bender, Yoo & Brill, LLP, counsel for the chapter 7 trustee ("Applicant"), has filed its application for a final allowance of fees and expenses in this case. Applicant has itemized \$428,838.50 in fees and \$7,599.52 in expenses, for a total of \$436,438.02. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on May 13, 2014, effective March 24, 2014. Applicant rendered a total of 775.20 hours of services to the estate billed at a blended hourly rate of \$553.20. Applicant's

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Mark Melchiori**

**Chapter 7**

services cover the period from March 24, 2014 through March 5, 2016.

Section 330(a)(1)(A) & (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$428,838.50. The court further allows as final expenses the sum of \$7,599.52.

**Farmer & Ready.** Farmer & Ready, counsel for the chapter 7 trustee (“Applicant”), has filed its application for a final allowance of fees and expenses in this case. Applicant has itemized \$86,275.00 in fees and \$7,674.78 in expenses, for a total of \$93,949.78. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on January 11, 2013, effective November 26, 2012. Applicant rendered a total of 246.50 hours of services to the estate billed at an hourly rate of \$350.00. Applicant's services cover the period from November 26, 2012 through May 8, 2014.

Section 330(a)(1)(A) & (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Mark Melchiori**

**Chapter 7**

administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$86,275.00. The court further allows as final expenses the sum of \$7,674.78.

**Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP.** Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP, special counsel for the chapter 7 trustee (“Applicant”), has filed its application for a final allowance of fees and expenses in this case. Applicant has itemized \$57,022.00 in fees and \$2,357.78 in expenses, for a total of \$59,379.78. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on January 16, 2014, effective November 26, 2012. Applicant rendered a total of 153.00 hours of services to the estate billed at a blended hourly rate of \$372.69. Applicant's services cover the period from November 26, 2012 through November 18, 2014.

Section 330(a)(1)(A) & (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$57,022.00. The court further allows as final expenses the sum of \$2,357.78.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Mark Melchiori**

**Chapter 7**

**M. Kathleen Klein.** M. Kathleen Klein, accountant for the chapter 7 trustee (“Applicant”), has filed her application for a final allowance of fees and expenses in this case. Applicant has itemized \$6,154.50 in fees and \$192.99 in expenses, for a total of \$6,347.49. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on July 16, 2013, effective June 12, 2013. Applicant rendered a total of 50.40 hours of services to the estate billed at a blended hourly rate of \$122.12. Applicant's services cover the period from June 12, 2013 through March 15, 2016.

Section 330(a)(1)(A) & (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$6,154.50. The court further allows as final expenses the sum of \$192.99.

Trustee shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Mark Melchiori

Represented By  
Edward P Kerns

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Mark Melchiori**

**Chapter 7**

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Timothy J Yoo  
Carmela Pagay  
Beth Ann R Young  
Irving M Gross  
Philip A Gasteier  
David J Tappeiner

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:15-12095 Gregory Lee Dobin**

**Chapter 7**

**#15.00** Hearing  
RE: [91] Motion for order that estate property is not abandoned under BK Code  
Sec 554(c)

FR. 9-6-16

Docket 91

**Tentative Ruling:**

None.

<b>Party Information</b>
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**Debtor(s):**

Gregory Lee Dobin

Represented By  
Faith A Ford

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
Noreen A Madoyan



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:15-12539 Tiffany Nicole Lopez**

**Chapter 7**

**#16.00 Hearing**

RE: [38] Motion Notice of Motion and Motion for: Chapter 7 Trustee's Motion to Compel Debtor to Appear for Examination at Continued § 341(a) Meeting of Creditors; Memorandum of Points and Authorities; Declaration in Support Thereof (Faith (TR), Jeremy)

Docket 38

**Tentative Ruling:**

None.

**Final Ruling.** This motion to compel debtor to appear for examination at continued 341(a) meeting of creditors has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted. The debtor is ordered to appear for examination at the next continued 341(a) meeting of creditors to be set for October 11, 2016. If the debtor fails to appear, the chapter 7 trustee shall be entitled to seek by *ex parte* motion an order directing the United States Marshals Service, or other officer authorized by law, to bring the debtor before the court. The movant shall submit an appropriate order granting the relief sought in the motion.

<b>Party Information</b>
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**Debtor(s):**

Tiffany Nicole Lopez

Represented By

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Tiffany Nicole Lopez**

**Chapter 7**

Vaughn C Taus

**Trustee(s):**

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:01 AM

**9:16-10007    Sung Yoon Song**

**Chapter 7**

**#17.00    Hearing**

RE: [51] Motion for Turnover of Property Notice of Motion and Motion to Compel Turnover of Estate Real Property and, if Necessary, for the Authority to Forcibly Evict the Debtor and other Occupants; Memorandum of Points and Authorities; Supporting Declarations of Jerry Namba, Bryce Kawata, and Reed H. Olmstead (Olmstead, Reed)

Docket      51

**\*\*\* VACATED \*\*\*    REASON: Continued to October 11, 2016, at 10:00 a.m.**

**Tentative Ruling:**

None.

<b>Party Information</b>
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**Debtor(s):**

Sung Yoon Song

Represented By  
David Brian Lally

**Trustee(s):**

Jerry Namba (TR)

Represented By  
Reed H Olmstead

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room      201**

10:01 AM

**9:16-10175    Ken Wayne Butler and Susan Lynn Butler**

**Chapter 7**

**#18.00    Hearing**  
RE: [64] Motion to Approve Compromise Under Rule 9019 with proof of service  
(Beall, William)

Docket      64

**Tentative Ruling:**

None.

**Final Ruling.** This motion to compromise controversy has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of any parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

On a motion by the trustee after notice and a hearing, the court may approve a compromise or settlement under FRBP 9019(a) upon a finding that it is "fair and equitable" to creditors. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988); Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986), *cert. denied sub. nom. Martin v. Robinson*, 479 U.S. 854 (1986). The trustee has the burden of persuading the court that the compromise is fair and equitable and is in the best interests of the estate. A&C Props., 784 F.2d at 1381; CAM/RPC Elecs. v. Robertson (In re MGS Mkg.), 111 B.R. 264, 266-67 (9<sup>th</sup> Cir. BAP 1990). The bankruptcy court need not conduct an exhaustive investigation nor a mini-trial on the validity or merits of the claims sought to be compromised. See, e.g., U.S. v. Alaska Nat'l Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9<sup>th</sup> Cir. 1982); In re Schmitt, 215 B.R. 417, 423 (9<sup>th</sup> Cir. BAP 1997). The court's

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Ken Wayne Butler and Susan Lynn Butler**

**Chapter 7**

proper role is "to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991).

In determining the fairness, reasonableness and adequacy of a proposed settlement, the court must consider: "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." Woodson, 839 F.2d at 620, *quoting* A&C Props., 784 F.2d at 1381. However, "while creditors' objections to a compromise must be afforded due deference, such objections are not controlling . . . ." A&C Props., 784 F.2d at 1382. The court may give weight to the opinions of the trustee, the parties, and their attorneys. Port O'Call Inv. Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976). A court generally should give deference to a trustee's exercise of business judgment. In re Mickey Thompson Entm't Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP 2003). Consideration must also be given to the principle that the law favors compromise and not litigation for its own sake. Blair, 538 F.2d at 851.

Here, the trustee has objected to the debtors' discharge in Adversary No. 16-10163-PC. The debtors have agreed to pay the trustee the sum of \$63,344.50, which represents the fair market value of estate assets that the trustee alleges were not turned over by the debtors to the trustee for the benefit of creditors and the estate. Debtors will pay the settlement amount in installments over a period of approximately 13 months. Upon payment of the settlement amount, the parties will exchange releases, the adversary proceeding will be dismissed, and the debtors will receive a discharge.

The court agrees that the compromise is fair and equitable, and in the best interest of the creditors and the estate. The potential costs in bringing this controversy to trial may be high and the potential recovery may be low. Therefore, it is in the estate's and the creditors' best interest to approve the compromise.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Ken Wayne Butler and Susan Lynn Butler**

**Chapter 7**

The content of the notice of compromise meets the due process requirement that it be “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Based on the foregoing, the settlement is approved.

The trustee shall submit an appropriate order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ken Wayne Butler

Represented By  
Andrew S Mansfield

**Joint Debtor(s):**

Susan Lynn Butler

Represented By  
Andrew S Mansfield

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
William C Beall

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-10175 Ken Wayne Butler and Susan Lynn Butler**

**Chapter 7**

**#19.00** Hearing  
RE: [66] Motion For Sale of Property of the Estate under Section 363(b) - No  
Fee with proof of service (Beall, William)

Docket 66

**Tentative Ruling:**

None.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Ken Wayne Butler

Represented By  
Andrew S Mansfield

**Joint Debtor(s):**

Susan Lynn Butler

Represented By  
Andrew S Mansfield

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
William C Beall

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-11011 Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

**#20.00** Hearing

RE: [24] Application to Employ SulmeyerKupetz, A Professional Corporation as General Bankruptcy Counsel ; Declaration Of Jeremy W. Faith In Support Thereof; Statement Of Disinterestedness In Support Thereof (Goodrich, David)

Docket 24

**Tentative Ruling:**

None.

**Final Ruling.** This motion to employ SulmeyerKupetz as counsel for the chapter 7 trustee has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtors and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted. Trustee is authorized to employ SulmeyerKupetz as general counsel under § 327 and on terms stated in the motion, with compensation and reimbursements subject to court approval under § 330. The movant shall submit an appropriate order granting the relief requested in the motion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Clifford Eugene Henley

Represented By

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT...**

**Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

Reed H Olmstead

Reed H Olmstead

**Joint Debtor(s):**

Colleen Denise Henley

Represented By

Reed H Olmstead

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By

David M Goodrich

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-11011 Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

**#21.00** Hearing  
RE: [26] Application to Employ Greenfield Draa & Harrington LLP as Special  
Litigation Counsel ; Declaration Of Jeremy W. Faith In Support Thereof  
(Goodrich, David)

Docket 26

**Tentative Ruling:**

None.

**Final Ruling.** This motion to employ Greenfield Draa & Harrington LLP as special litigation counsel for the chapter 7 trustee has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtors and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted. Trustee is authorized to employ Greenfield Draa & Harrington LLP as special litigation counsel under § 327(e), § 328 and in accordance with FRBP 2014(a) and LBR 2014-1(b)(1). The movant shall submit an appropriate order granting the relief requested in the motion.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Clifford Eugene Henley

Represented By  
Reed H Olmstead  
Reed H Olmstead  
Reed H Olmstead

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT...**

**Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

Reed H Olmstead  
Reed H Olmstead

**Joint Debtor(s):**

Colleen Denise Henley

Represented By  
Reed H Olmstead

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
David M Goodrich

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-11011 Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

**#22.00** Hearing

RE: [28] Motion to approve compromise Chapter 7 Trustee's Motion To Approve Settlement Between Chapter 7 Trustee And Greenfield Draa & Harrington LLP; Memorandum Of Points And Authorities; Declaration Of Jeremy W. Faith In Support Thereof (Goodrich, David)

Docket 28

**Tentative Ruling:**

None.

**Final Ruling.** This motion to approve settlement between chapter 7 trustee and Greenfield Draa & Harrington LLP ("Firm") has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtors and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j) (3). **No appearance is necessary.**

On a motion by the trustee after notice and a hearing, the court may approve a compromise or settlement under FRBP 9019(a) upon a finding that it is "fair and equitable" to creditors. *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988); *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986), *cert. denied sub. nom. Martin v. Robinson*, 479 U.S. 854 (1986). The trustee has the burden of persuading the court that the compromise is fair and equitable and is in the best interests of the estate. *A&C Props.*, 784 F.2d at 1381; *CAM/RPC Elecs. v. Robertson (In re MGS Mkg.)*, 111 B.R. 264, 266-67 (9<sup>th</sup> Cir. BAP 1990). The bankruptcy court need not conduct an exhaustive investigation nor a mini-trial on the

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

validity or merits of the claims sought to be compromised. See, e.g., U.S. v. Alaska Nat'l Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982); In re Schmitt, 215 B.R. 417, 423 (9th Cir. BAP 1997). The court's proper role is "to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991).

In determining the fairness, reasonableness and adequacy of a proposed settlement, the court must consider: "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." Woodson, 839 F.2d at 620, *quoting* A&C Props., 784 F.2d at 1381. However, "while creditors' objections to a compromise must be afforded due deference, such objections are not controlling . . . ." A&C Props., 784 F.2d at 1382. The court may give weight to the opinions of the trustee, the parties, and their attorneys. Port O'Call Inv. Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976). A court generally should give deference to a trustee's exercise of business judgment. In re Mickey Thompson Entm't Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP 2003). Consideration must also be given to the principle that the law favors compromise and not litigation for its own sake. Blair, 538 F.2d at 851.

The Firm asserts an attorneys' lien against \$39,282.61 in proceeds generated from representing NexGen Solutions, Inc. ("NexGen") in Case No. 115CV284638, NexGen Solutions, Inc. v. Silicon Valley Bank, in the Superior Court of Santa Clara County. Debtors are the sole owners of NexGen. Pursuant to the proposed settlement agreement: (1) the Firm's lien will be reduced from \$39,282.61 to \$25,000.00, secured against any proceeds the estate receives from said litigation; and (2) the Firm shall not object to the chapter 7 trustee's motion for substantive consolidation of NexGen One Solutions, Inc. into this bankruptcy case. The court agrees that the proposed compromise is fair and equitable, and because it is in the best interest of the creditors and the estate, it is approved.

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT...**

**Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

The content of the notice of compromise meets the due process requirement that it be “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and to afford them the opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Based on the foregoing, the settlement is approved.

The trustee shall submit an appropriate order.

<b>Party Information</b>
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**Debtor(s):**

Clifford Eugene Henley

Represented By

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

**Joint Debtor(s):**

Colleen Denise Henley

Represented By

Reed H Olmstead

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By

David M Goodrich

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-11011 Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

**#23.00** Hearing

RE: [30] Motion For Order Directing Substantive Consolidation Of Nexgen One Solutions; Memorandum Of Points And Authorities; Declarations Of Jeremy W. Faith And Clifford Henley In Support Thereof (Goodrich, David)

Docket 30

**Tentative Ruling:**

None.

**Final Ruling.** This motion for substantive consolidation of NexGen One Solutions, Inc. has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtors and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted. The debtors' bankruptcy estate and the debtor's closely held corporation, NexGen, are substantively consolidated *nunc pro tunc* to the petition date. Movant shall submit an appropriate order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Clifford Eugene Henley

Represented By

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

Reed H Olmstead

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**CONT... Clifford Eugene Henley and Colleen Denise Henley**

**Chapter 7**

**Joint Debtor(s):**

Colleen Denise Henley

Represented By  
Reed H Olmstead

**Trustee(s):**

Jeremy W. Faith (TR)

Represented By  
David M Goodrich



**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-11207 Karen Andrea Kirkwood**

**Chapter 7**

**#24.00 Hearing**

RE: [17] Motion to vacate order Denying Motion to Approve Reaffirmation Agreement Pursuant to FRCP Rule 60; Declaration of Karen Derfer in Support

Docket 17

**Tentative Ruling:**

None.

**Final Ruling.** This motion for relief from order denying motion to approve reaffirmation agreement has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of any parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9<sup>th</sup> Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted. The order denying debtor's motion to approve reaffirmation agreement entered on August 9, 2016 (Dkt. 13) is vacated. Upon entry of the order granting the motion, the clerk will set the reaffirmation agreement for hearing. The movant shall submit an appropriate order.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Karen Andrea Kirkwood

Represented By  
Karen L Grant  
Karen L Grant

**Trustee(s):**

Jerry Namba (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Judge Peter Carroll, Presiding  
Courtroom 201 Calendar**

**Tuesday, October 04, 2016**

**Hearing Room 201**

10:01 AM

**9:16-10922 Chinacode, Inc.**

**Chapter 7**

**#25.00** Hearing  
RE: [106] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) - Chapter 7 Trustee's Motion for Order Authorizing Trustee to Sell Real Property; to Pay Costs of Sale; to Satisfy Directly from Escrow Certain Obligations Secured by the Real Property, etc., with Proof of Service,. (Torres, Felicity)

Docket 106

**Tentative Ruling:**

None.

<b>Party Information</b>
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**Debtor(s):**

Chinacode, Inc.

Pro Se

**Trustee(s):**

Sandra McBeth (TR)

Represented By  
Felicita A Torres